14.

Grayson

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 135

THE ÆTNA INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES O. HOWE AND HENRY SANDERSON, ADMINISTRATORS OF HENRY K. WHITE, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED [illegible] 10, 1866.

14.

SUPREME COURT OF THE UNITED STATES.

No. 344.

THE ÆTNA INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES O. HOWE AND HENRY SANDERSON, ADMINISTRATORS OF HENRY K. WHITE, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the Circuit Court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court on Friday, the first of March, in the year of our Lord one thousand eight hundred and sixty-seven, as yet of the December term of said court, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety-first year.

WILLIAM H. BRADLEY, *Clerk*.

2 CHARLES O. HOWE AND HENRY Sanderson, as administrators of all an singular the goods and chattels, rights [rights] and credits which were of Henry K. White, deceased, *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

Be it remembered, that on the twentieth day of March, A. D. one thousand eight hundred and sixty-six, came Charles O. Howe and Henry Sanderson, as administrators of all and singular the goods and chattels, rights and credits which were of Henry K. White, deceased, at the time of his decease, plaintiffs, by King & Scott, their attorneys, and filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe for a writ of summons against the Ætna Insurance Company, defendant, and also at the same time filed
3 in the said clerk's office their bond for costs in the said entitled cause, which said præcipe and bond are in the words and figures following, to wit:

Circuit Court of the United States, northern district of Illinois.

Præcipe.

CHARLES O. HOWE AND HENRY SANderson, as administrators of all and singular the goods and chattels, rights and credits which were of Henry K. White, deceased, at the time of his decease, *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.—Damages $5,000.

You will please issue a summons in the above cause in favor of said plaintiffs, who are citizens of the State of Illinois, and against

said defendant, "Ætna Insurance Company," a corporation existing under and by virtue of the laws of the State of Connecticut,
4 and make the same returnable to the May term of said court, A. D. 1866.

KING & SCOTT,
Pl'ffs' Att'ys.

To Wm. H. Bradley, clerk.
March 30th, 1866.

Endorsed: "Filed March 30, 1866. Wm. H. Bradley, cl'k."

Circuit Court of the United States, northern district of Illinois.

Bond for costs.

CHARLES O. HOWE AND HENRY SANDERSON, as administrators of all and singular the goods and chattels, rights and credits which were of Henry K. White, deceased, at the time of his decease,
vs.
ÆTNA INSURANCE COMPANY.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them,
5 I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.
Dated March 30th, 1866.

PHILIP WADSWORTH.

[5-cent U. S. rev stamp.]

Endorsed: "Filed March 30, 1856. Wm. H. Bradley, cl'k."

And on this day, to wit, the thirtieth day of March, A. D. 1866, a writ of summons issued out of the said clerk's office, against the said defendant in the said entitled cause, which said writ, together with the return of the marshal thereon, is in the words and figures following, to wit:

Circuit Court of the United States of America.

Summons.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

6 We command you that you summon Ætna Insurance Company, if it shall be found in your district, to be and appear be-

fore our judges of our Circuit Court of the United States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto Charles O. Howe and Henry Sanderson, as administrators, of all and singular the goods and chattles, rights and credits which were of Henry K. White, deceased, at the time of his decease in a plea of trespass on the case upon promises, to their damage, as they allege, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 30th day of March, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the 90th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-ct. U. S. rev. stamp.]

7 I have executed the within writ by delivering a true copy thereof to each of the following-named persons, to wit, Gurdon S. Hubbard and Charles H. Hunt, who are the members of the firm of Hubbard & Hunt, and the agents of and for the within-named Ætna Insurance Company, residing at Chicago, in my district, as such agents, on this 2nd day of April, A. D. 1866.

J. R. JONES, *U. S. Marshal,*
By A. B. COTES, *Deputy.*

Endorsed: "Filed April 3d, A. D. 1866. Wm. H. Bradley, clerk."

And on this day, to wit, the seventh day of May, A. D. 1866, came the said plaintiffs, by their attorneys, and filed in the said clerk's office their declaration in the said entitled cause, which said declaration is in the words and figures following, to wit:

8 Circuit Court of the United States, eighth circuit, May term, A. D. 1866.

Declaration.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Charles O. Howe and Henry Sanderson, as administrators of all and singular the goods and chattels, rights and credits which were of Henry K. White, deceased, at the time of his decease plaintiff in this suit, who are citizens of the State of Illinois, residing in the northern district of Illinois, by King & Scott, their attorneys, complain of Ætna Insurance Company, a corporation existing under and by virtue of the laws of the State of Connecticut, defendant herein, which has been summoned, &c., of a plea of trespass on the case on promises.

For that whereas the said defendant heretofore, and in the lifetime

of said Henry K. White, deceased, (who at the time of his decease was a citizen of the State of Illinois,) to wit, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-four, to wit, at Kankakee, in the district aforesaid, on the application of said Henry K. White, made a certain policy of in-
9 surance in writing, whereby the said defendant, in consideration of sixty-four dollars and ninety-six cents to it in hand paid by the said Henry K. White in his lifetime, (since deceased) the receipt whereof was thereby acknowledged, did insure the said Henry K. White (by the name of "H. K. White, esq.,") against loss or damage by fire, to the amount of fifty-eight hundred dollars, as follows, viz: fifteen hundred dollars on hay baled and loose, contained in his frame barn; fifteen hundred dollars on timothy hay contained in two stacks, $750 on each stack; twenty-eight hundred dollars on prairie hay contained in fourteen stacks, $200 each stack, said property situated in the village of Clifton, Iroquois county, Illinois.

And the said defendant, for the consideration aforesaid, did in and by said policy promise and agree to make good unto said Henry K. White, his executors, administrators and assigns, all such immediate loss or damage not exceeding in amount the said sum of fifty-eight hundred dollars, as should happen by fire to the property therein and herein above specified, from the first day of November, one thousand eight hundred and sixty-four, (at twelve o'clock at noon,)
10 unto the first day of March, one thousand eight hundred and sixty-five, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time such loss or damage should happen, and to be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions annexed to said policy; provided always, and it was in and by said policy declared, that the said defendant should not be liable to make good any loss or damage by fire which might happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire; and it was in and by said policy further provided that in case the said Henry K. White should have already any other insurance against loss by fire on the property therein insured not notified to said defendant and mentioned in or endorsed upon said policy, then said insurance should be void and of no effect. And if said assured (Henry K. White) should thereafter make any other insurance on the same property and
11 should not, with all reasonable diligence, give notice thereof to said defendant and have the same endorsed on said policy, or otherwise acknowledged by defendant in writing, said policy should cease and be of no further effect. And in case of any other insurance upon the property thereby insured, whether prior or subsequent to the date of said policy, said Henry K. White should not, in case of loss or damage, be entitled to demand or recover of said defendant any greater portion of the loss or damage sustained than the amount thereby insured should bear to the whole amount insured on said property. And it was in said policy agreed and declared to

be the true intent and meaning of the parties thereto that in case the White (meaning the said building) therein mentioned should at any time after the making and during the continuance of said insurance be appropriated or applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra hazardous, or included in the memorandum of special rates in the conditions annexed to said policy, or for the purpose of storing or vending therein any of the articles, goods
12 or merchandise in the conditions aforesaid denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless therein otherwise specially provided for, or thereafter agreed to by said defendant in writing and added to or endorsed upon said policy, then and from thenceforth, so long as the same should be so appropriated, applied or used, the said policy should cease and be of no force or effect. And it was moreover in and by the said policy declared that said insurance was not intended to apply to or cover any books of accounts, written securities, deeds or other evidences of title to lands, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion. And that said policy was made and accepted in reference to the conditions thereto annexed, which were to be used and resorted to in order to explain the rights and obligations of the parties thereto, in all cases not therein otherwise specially provided for.

And it was in and by said policy provided that said policy should not be valid until countersigned by the duly authorized agent of said defendant at Kankakee, Illinois, and the said plaintiffs aver
13 that the conditions in said policy referred to were and are in the words following, that is to say:

Conditions of insurance referred to in the body of the foregoing policy.

1. Goods not hazardous are such as are usually kept in dry goods stores, including coffee, flour, household furniture and linen, indigo, rice, spices, sugars, teas and other articles not combustible.

2. The following trades and occupations, goods, wares and merchandise are denominated hazardous, viz: alcohol, basket sellers, brushmakers' stock, cabinet furniture, china, earthen or glass ware, or plate glass in boxes, crates or casks; copper-plate printers, cotton in bales, hat finishers, (without use of fire except for heating their irons,) hardware and cutlery, jewellers' stock, liquor in glasses, unpacked looking-glasses in boxes, Manilla grass in bales, paints ground in oil, paper-hanging, porter houses, potash, pocket-book makers' stock, printers of newspapers, rags in packages, sail makers, ship chandlers, spirituous liquors, cigar makers, stationers' stock, snuff makers, threshed grain, tin or sheet-iron workers, victualling houses, watch makers' stock and tools, wine in glass or packages, window or plate glass in packages.

14 3. The following trades and occupations, goods, wares and merchandise are denominated extra hazardous, viz: basket makers, straw bleachers, booksellers' stocks, blacksmiths, boat build-

ers, brass founders, china, earthen or glass ware or looking-glasses unpacked, confectioners' stock, cotton unpacked, coopers, coppersmiths, druggists and apothecaries, fur dressers, flax in bales, fringe makers, gun makers or smiths, grate makers, hay pressed in bundles, hemp in bales, ink makers, lamp manufacturers, lamp sellers' stock, lithographers, milliners' stock, morocco manufacturers, optical and mathematical instrument makers, painters' stock, perfumers' stock, phosphorous, pictures and prints, printers of books and jobbing, plate or plated ware manufactories, pocket-book makers, plumbers and pewterers, saltpetre, silversmiths, stables, (private,) spirits of turpentine, stove manufactories, tobacco manufacturers, toy-keepers' stock, type or stereotype manufacturers, varnish, window and plate glass unpacked.

MEM.—Bakers; bark mills; blind makers; breweries, book-binders; blacksmiths; boat builders; cabinet makers; carpenters; joiners; chair or coach makers' workshops; chemists; cotton mills; dyers; forges; fences; frame makers; furriers; fulling mills; grist mills; hat manufactories; houses, building or repairing; ink or ivory
15 black, or lamp-black manufactories; livery stables; lumber or mahogany yards; malt houses; metal and other mills of all kinds; musical instrument makers, oil makers, pump and block makers' shops; paper mills; rope makers; saw mills; ship builders' stock in the yard; ships or other vesselsin port, or their cargoes, or when building or repairing steam engines or boats; tanneries; tallow melters and chandlers; timber yards; woolen mills, and generally all manufacturing establishments, and all trades requiring the use of fire, heat, or steam power not before enumerated, will be insured at special rates of premium. The following are not to be insured at any rate of premium, viz: brimstone works; distilleries; flax mills; gunpowder; oil boiling houses; oakum factories; panoramas or other scenic paintings; patent leather manufactories; sash and blind factories; snuff mills; steam planing mills; tar boiling houses; theatres; turpentine manufactories; varnish makers; steam saw mills; sugar refineries, and India-rubber factories.

4. Applications for insurance must specify the construction and materials of the building to be insured, or containing the
16 property to be insured; by whom occupied; whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; whether any manufactory is carried on within or about it, and, in case of goods and merchandise, whether or not they are of the description denominated hazardous, extra hazardous, or included in the memorandum of special rates. And a false description by the asssured of a building or of its contents, or the omission to make known any fact material to the risk, or in a valued policy an over valuation, shall render absolutely void a policy issued upon such description or valuation; but the office will be responsible for the accuracy of surveys and valuations made by its agents. If, after insurance is effected, either by the original policy or by the renewal thereof, the risk be increased by any means within the control of the assured, or if such buildings or premises shall be, with the assent of the assured, occupied in any way so as

to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect. If, during this insur-
17 ance, any subsequent insurance should be made upon the property hereby insured, which, with the sum or sums already insured, should in the opinion of the said Ætna Insurance Company amount to an over-insurance, or the risk be increased by the erection of buildings, or by the use or occupation of neighboring premises or otherwise, or if, for any other cause, the company shall so elect, it shall be optional with the company to cancel this policy after notice given to the assured or his representative of their intention to do so, in which case the company will refund the premium for the unexpired time.

5. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium.

6. Goods held in trust or on commission are to be insured as such, otherwise the policy will not cover such property; and in case of loss the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein. Goods on storage must be separately and specifically insured. If the interest or property insured be leasehold, or
18 that of mortgage, or any other interest not absolute, such must be made known to this company and expressed in the policy.

7. Policies of insurance subscribed by this company shall not be assignable without the consent of the company, expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the company in virtue of such policy shall thenceforth cease; and in case of any transfer or change of title in the property insured by this company, or of any undivided interest therein, such insurance shall be void and cease.

8. This company will not be liable for damage to property by lightning, aside from fire, nor for damage occasioned by the explosion of a steam boiler, nor for damage by fire resulting from such explosion; nor explosions caused by gunpowder, gas, or other explosive substances; nor for damage occasioned by the use of camphene, spirit gas, or burning fluid, unless otherwise expressly provided. The keeping of gunpowder for sale or on storage upon or in the premises insured, without written permission in the policy, shall render it void.

19 9. Jewels, watches, plate, medals, musical instruments, paintings, statuary, sculpture and curiosities, are not deemed to be included in any insurance, unless an inventory thereof accompany the application for insurance, or is inserted in the policy.

10. In case of fire, or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use all possible diligence in saving and preserving the property; and if they shall fail so to do, this company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect; and it is also mutually understood that there can be no abandonment to the insurers of the subject insured.

11. All persons insured by this company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the company, or its agents, and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands, and verified by their oath or affirmation. They shall also declare on oath whether any and what other insurance has been made on the same property; what was the whole value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandise or otherwise) the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such buildings; and when and how the fire originated, so far as they know or believe, and procure a certificate, under the hand of a magistrate or notary public, (most contiguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers,) that he is acquainted with the character and circumstances of the person or persons insured, and has made diligent inquiry into the facts set forth in their statement, and knows or verily believes that he, she, or they really and by misfortune, and without fraud or evil practice, hath or have sustained by such fire loss and damage to the amount therein mentioned; and also, if required, shall produce their books of account and other proper vouchers; and shall also, if required, submit to an examination under oath by the agent or attorney of the company, and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proof, declarations and certificates are produced, and examination, if required, the loss shall not be deemed payable. Also, if there appear any fraud or false swearing, the insured shall forfeit all claim under this policy. Damage to buildings not totally destroyed shall be appraised by disinterested men, mutually agreed upon by the assured and the office or its agents; and where merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kind; and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers, mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant, one-half of the appraisers' fees to be paid by the insurers. A copy of the written portion of the policy to be given in the affidavit of the claimant in all cases; also copy of all other policies insuring same property and showing payment of the same loss with this company. A claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured in conformity with the conditions of this policy, in like manner as if no assignment

had been made; otherwise this policy shall be void and of no force or validity whatever, and all liability on the part of this company shall cease. Reinsurance for any other insurance company to be on the basis of joint liability with said company, and in no event will this company be liable for a sum greater than such portion as the sum hereby reinsured bears to the whole sum insured on the property by the company reinsured, and in case of loss this company to pay their pro rata proportion at the same time, manner and form as the company reinsured. Plans and specifications of buildings, machinery and fixtures damaged or destroyed must be furnished, free of expense, when requested. When an inventory of merchandise or other property, sound or damaged, is to be taken in adjusting a claim for loss or damage, this company shall have notice, and the appointment of one or more assistants to complete such listing of property, when required by its agent.

Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved, and in case differences shall arise touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties. In case of any loss on or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged, with others of the same kind and equal goodness, and to rebuild or repair the building or buildings, within a reasonable time, giving notice of their intention so to do within thirty days after the preliminary proofs shall have been received at the office of the company.

13. Insurance once made, may be continued for such further term as may be agreed on, the premium thereon being paid, and a renewal receipt being given for the same, and it shall be considered as continued under the original representation in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself or by the surrounding or adjacent buildings.

14. When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy, and warranty on the part of the assured.

15. When property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

16. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or deviation from the laws or regulations of police, made to prevent accidents from fires, in places where laws and regulations on this subject exist.

17. It is furthermore hereby expressly provided, that no suit of action against said company for the recovery of any claim upon, under or by virtue of this policy shall be sustainable in any court or law or chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

18. In case this insurance shall be on property situated over
26 one mile from the city, town or village in which the agency is located, where this policy is filled and countersigned, it is to be a condition of the insurance in the event of any loss covered by this policy, one-fourth of such loss is to be borne by the assured, and three-fourths by this company, (not exceeding the sum insured,) nor in the event of additional insurance by other companies on property so situated, any greater proportion of said loss than may be necessary to make good said three-fourths proportion of the loss sustained, except in the case of buildings damaged or partially destoyed which have been surveyed and values approved by a duly authorized agent or surveyor of this company.

And the said plaintiffs further say, that afterwards, to wit, on the first day of March, A. D. 1865, the said Henry K. White, then living, since deceased, at Kankakee, in the district aforesaid, made another application to the said defendant for the renewal and continuation of the said policy; and the said defendant then and there, to wit, on the day and year and at the place last aforesaid, in consideration of
27 the sum of thirty-eight dollars and eighty-six cents, to defendant paid by said Henry K. White, the receipt whereof was by the said defendant in writing acknowledged, the said defendant continued the said policy in force, for the sum of fifty-eight hundred dollars for two months, to wit, from the first day of March, A. D. 1865, until the first day of May, A. D. 1865, at noon.

And thereupon afterwards—to wit: on the first day of March, A. D. 1865—at Kankakee, in the district aforesaid, in consideration that the said Henry K. White, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money—to wit: the sum of thirty eight dollars and eighty-six cents, lawful money of the United States of America—as a premium for the insurance of fifty-eight hundred dollars of and upon the premises and property in said policy of insurance mentioned, and had then and there undertaken, and faithfully promised the said defendant to perform and fulfil all things in the said policy of insur-
28 ance, and the conditions thereto annexed, contained, on the part and behalf of the said insured, to be performed, fulfilled and kept, the said defendant then and there faithfully promised the said Henry K. White, then living, since deceased, that the said defendant would become and be an insurer to the said Henry K. White of said sum of fifty-eight hundred dollars upon the premises and property

in the said policy of insurance mentioned, and would perform and fulfil all things in said policy of insurance mentioned on their part and behalf as such insurer to be performed and fulfilled; and the said defendant then and there became and was an insurer to the said Henry K. White, and then and there duly renewed the said policy of insurance as such insurer of the said sum of fifty-eight hundred dollars upon the said premises and property in the said policy of insurance mentioned, to wit, in the district aforesaid.

And the said plaintiffs aver, that at the time of making of the said policy of insurance, and the renewal thereof as aforesaid,
29 and from thence until the loss and damage hereinafter mentioned, the said Henry K. White had an interest in the said insured premises and property to a large amount, to wit, to the amount of all the money by him insured thereon, to wit, in the district aforesaid; and that afterwards, to wit, on the third day of April, A. D. one thousand eight hundred and sixty-five, the said premises and property, in the said policy of insurance mentioned, were burnt, consumed and destroyed by fire, which did not happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, whereby the said Henry K. White, in his lifetime, sustained damages to a large amount, to wit, the amount of the money thereon assured, to wit, at Kankakee, in the district aforesaid.

And the said plaintiffs further aver, that the said premises and property, in the said policy mentioned, at the time of the making thereof, or at any time since the renewal thereof, were not
30 insured in any other office than the said defendant's, except an insurance of six thousand dollars in the Home Insurance Company of New York, which was notified to said defendant and endorsed on their said policy at the time of the making and issuing thereof.

And the said plaintiffs further aver, that the building in said policy mentioned was not, at any time after the renewal thereof, and during the continuance thereof, appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous or extra hazardous, or specified in the memorandum of special rates, in the conditions annexed to said policy, or for the purpose of storing therein any of the articles, goods or merchandise in said conditions denominated hazardous or extra hazardous, or included in the said memorandum of special rates, unless otherwise specially provided for in said policy.

31 And said plaintiffs further aver, that said policy of insurance was, on the day of the date thereof, duly countersigned by the agents of said defendant at Kankakee, Illinois.

And the said plaintiffs further aver that afterwards, to wit, on the ninth day of April, A. D. 1865, the said Henry K. White departed this life intestate, and that said plaintiffs were afterwards, to wit, on the 25th day of April, A. D. 1865, duly appointed administrators of all and singular the goods and chattels, rights and credits which were of the said Henry K. White at the time of his decease, by the County Court of Iroquois county, in the State of Illinois.

And said plaintiffs further aver that they forthwith after said loss, to wit, on the 27th day of April, A. D. 1865, gave notice thereof to the said defendant, and as soon thereafter as possible, to wit, on the twenty-second day of September A. D. 1865, to wit, at Kankakee, in the district aforesaid, did deliver to the said defendant as particular an account of the said loss and damage as the nature of
32 the case would admit, signed by the said plaintiffs respectively as administrators as aforesaid, and accompanied the same with their (said plaintiffs') oath that said account was just and true, and showing in said account the value of the premises and property insured and when and how the fire originated, so far as they knew or believed, and the interest of the said Henry K. White in the property insured at the time of the loss or damage aforesaid; and that annexed to said account and therewith delivered was a certificate, under the hand and seal of a justice of the peace most contiguous to the place of fire and not concerned in the loss, or related to the insured, therein stating that he had examined the circumstances attending such fire and the loss and damage alleged, and that he was acquainted with the character and circumstances of the insured, and that he verily believed that the said insured had, by misfortune and without fraud or evil practice, sustained loss and damage on the property insured to the amount of four thousand five hundred
33 and fifty-two dollars and four cents.

And the said plaintiffs further aver, that although the said Henry K. White, in his lifetime, and said plaintiffs as administrators as aforesaid, since his decease, have in all things observed, performed and fulfilled all and singular the matters and things which, on the part of said Henry K. White in his lifetime, and of said plaintiffs as administrators since his decease, were to be observed, performed and fulfilled according to the form and effect of said policy of insurance; and although the said Henry K. White in his lifetime sustained loss and damage on occasion of said fire to a large amount, to wit, to the amount of fifty-eight hundred dollars and upwards, as aforesaid, yet the said defendant has not paid to the said Henry K. White in his lifetime, or to said plaintiffs, administrators as aforesaid, since the death of said Henry K. White, the said sum of money so by the said defendant insured as aforesaid, or repaid or reimbursed the said loss sustained by the said fire as aforesaid, although often so
34 requested, or any part thereof; but the sum so insured as aforesaid, and the said loss, and every part thereof still remains wholly in arrear and unpaid, contrary to the form and effect of the said policy of insurance so by the said defendant in that behalf made as aforesaid.

And also for that whereas the said defendant heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-four, to wit, at Kankakee, in the district aforesaid, on application of Henry K. White, (since deceased,) made a certain other policy of insurance whereby the said defendant, in consideration of sixty-four dollars and ninety-six cents to the defendant in hand paid by the said Henry K. White, the receipt whereof

was thereby acknowledged, did insure the said Henry K. White (by the name of "H. K. White, esq.") against loss or damage by fire, to the amount of fifty-eight hundred dollars, as follows, viz., fifteen hundred dollars on hay, baled and loose, contained in his
35 frame barn.

Fifteen hundred dollars on timothy hay contained in two stacks, seven hundred and fifty dollars on each stack.

Twenty-eight hundred dollars on prarie hay contained in fourteen stacks, two hundred dollars each stack.

Said property situated in the village of Clifton, Iroquois county, Illinois. And the said defendant, for the consideration aforesaid, did, in and by the said policy, promise and agree to make good unto the said Henry K. White, his executors, administrators and assigns, all such loss or damage, not exceeding in amount the said sum of fifty-eight hundred dollars, as should happen by fire to the property therein and herein above specified, from the first day of November, A. D. 1864, (at twelve o'clock at noon,) until the full end and term of four months, or until the first day of March, A. D. 1865, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same
36 should happen; and to be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions annexed to said policy; provided always, and it was in and by the said policy declared, that the said defendant should not be liable to make good any loss or damage by fire which might happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire.

And it was in and by said policy further provided, that in case the assured should have already any other insurance against loss by fire, on the property thereby insured, and not notified to said defendant and mentioned in or endorsed upon said policy, then said insurance was to be void and of no effect; and that if the said assured or his assigns should thereafter make any or other insurance on the same property, and should not with all reasonable diligence give notice thereof to said defendant, and have the same endorsed on said policy, or
37 otherwise acknowledged by them in writing, said policy should cease and be of no further effect. And that in case of any other insurance upon the property therein insured, whether prior or subsequent to the date of said policy, the assured should not in case of loss or damage be entitled to demand or recover of said defendant any greater portion of the loss or damage sustained than the amount thereby insured should bear to the whole amount insured on the said property. And it was in said policy agreed and declared to be the true intent and meaning of the parties thereto, that in case the above-mentioned White (meaning said frame barn) should at any time after the making and during the continuance of said insurance be appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra hazardous, or included in the memorandum of special

rates, in the conditions annexed to said policy, or for the pur-
38 pose of storing or vending therein any of the articles, goods or merchandise in the conditions aforesaid denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless therein otherwise specially provided for, or thereafter agreed by said defendant in writing, and added to or endorsed upon said policy, then and from thenceforth so long as the same should be so appropriated, applied or used, said policy should cease and be of no force or effect. And it was moreover in and by said policy declared that said insurance was not intended to apply to or cover any books of accounts, written securities, deed or other evidences of title to lands, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion. And that said policy w s made and accepted in reference to the conditions thereto annexed, which were to be used and resorted to in order to explain the rights and obligations of the parties thereto, in all cases not therein other-
39 wise specially provided for. And that said policy should not be valid until countersigned by the duly authorized agent of said defendant at Kankakee, Ills.

And the said plaintiffs aver that the said conditions and special rates in the said policy referred to were and are in all respects the same as those set forth and contained in the first count hereinabove set out, as by the said policy of insurance and the conditions and special rates thereto annexed will, when produced, more fully appear, reference being thereto had.

And the said plaintiffs further say that afterwards, to wit, on the first day of March, A. D. 1865, to wit, at Kankakee, in the district aforesaid, the said defendant, in consideration of thirty-eight dollars and eighty-six cents to them paid by the said Henry K. White, the receipt whereof was by the said defendant in writing acknowledged, continued the said policy in force for the sum of fifty-eight hundred dollars, for two months, to wit, from the first day of March, A. D. 1865, until the first day of May, A. D. 1865, at noon.

40 And thereupon afterwards, to wit, on the first day of March, A. D. 1865, to wit, at Kankakee, in the district aforesaid, in consideration that the said Henry K. White, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the sum of thirty-eight dollars and eighty-six cents, lawful money of the United States of America, as a premium for the insurance of fifty-eight hundred dollars of and upon the property in said policy of insurance mentioned, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things in the said policy of insurance and the conditions thereto annexed contained, on the part and behalf of the said insured to be performed, fulfilled and kept, the said defendant then and there faithfully promised the said Henry K. White in his lifetime that the said defendant would become
41 and be an insurer to the said Henry K. White of the said sum of fifty-eight hundred dollars upon the property in said policy mentioned, and would perform and fulfil all things in said policy men-

tioned on defendants' part and behalf as such insurer to be performed and fulfilled. And the said defendant then and there became and was an insurer to said Henry K. White in his lifetime, and then and there duly renewed the said policy of insurance as such insurer of the said sum of fifty-eight hundred dollars upon the said property in the said policy mentioned, to wit, at Kankakee, in the district aforesaid.

And the said plaintiffs aver that at the time of the renewal of the said policy of insurance as aforesaid, and from thence until the loss and damage hereinafter mentioned, said Henry K. White had an interest in the said insured property to a large amount, to wit, to the amount of all the money insured thereon, to wit, at Kankakee aforesaid.

And that afterwards, to wit, on the third day of April,
42 A. D. 1865, the said property in the said policy of insurance mentioned was burnt, consumed and destroyed by fire, which did not happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, whereby the said Henry K. White in his lifetime sustained damage to a large amount, to wit, to the amount of the money on said property insured, to wit, at Kankakee, in the district aforesaid.

And the said plaintiffs further aver, that said policy of insurance was, on the day of the date thereof, countersigned by the duly authorized agent of said defendant at Kankakee, Illinois, and they further aver that the building in said policy mentioned was not at any time after the renewal thereof as aforesaid appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, or extra hazardous, or included in the memoradum of special rates in the conditions annexed to said policy, or for the purpose of storing or vend-
43 ing therein any of the articles, goods or merchandise in the said conditions denominated hazardous or extra hazardous, or included in said memorandum of special rates, unless otherwise specially provided for in said policy.

And said plaintiffs further aver that at the time of the making and issuing of said policy, nor at any time thereafter, did the said Henry K. White have or obtain any other insurance on the said property mentioned in said policy, except such as was notified to said defendant and mentioned in and endorsed on said policy of insurance.

And said plaintiffs further say that afterwards, to wit, on the ninth day of April, A. D. 1865, the said Henry K. White departed this life intestate, at the county of Iroquois, State of Illinois, and afterwards, to wit, on the twenty-fifth day of of April, A. D. 1865, letters of administration were issued by the County Court of Iroquois county, State of Illinois, to said plaintiffs, of all and singular the goods and chattels, rights and credits, which were of the said Henry K. White at the time of his decease; which said letters of administra-
44 tion, bearing date the day and year last aforesaid, the said plaintiffs here bring into court, which give sufficient evidence to the said court here of the grant of administration to the said plaintiffs aforesaid.

And the said plaintiffs further aver that the said Henry K. White forthwith after the said loss, to wit, on the fifth day of April, A. D. 1865, gave notice thereof to the said defendant, and as soon thereafter as possible, to wit, on the twenty-third day of September, A. D. 1865, the said plaintiffs, as administrators as aforesaid, did deliver to the said defendant in writing an account of the loss and damage aforesaid, as far as the nature of the case would admit, signed by the said plaintiffs as administrators as aforesaid, and duly verified as in all respects just and true, showing therein the value of the property insured and in what general manner, and when and how the fire originated, so far as said plaintiffs knew or believed, and the interest of said Henry K. White in the property insured at the time of the loss or damage aforesaid. And that annexed to said account and therewith
45 delivered was a certificate under the hand and seal of a magistrate most contiguous to the place of fire, and not in any way concerned in the loss or related to the insured, therein stating that he had examined the circumstances attending such fire and the loss and damage alleged, and that he was acquainted with the character and circumstances of the insured, and that he verily believed that the insured had by misfortune and without fraud or evil practice sustained loss and damage on the property insured to the amount of four thousand five hundred and fifty-two dollars and four cents.

And the said plaintiffs further aver that although the said Henry K. White in his lifetime, and the said plaintiffs, as administrators aforesaid, since his decease, have in all things observed, performed and fulfilled all and singular the matters and things which on the part of said Henry K. White in his lifetime, and of said plaintiffs, as administrators as aforesaid, since his decease, were to be observed,
46 performed and fulfilled according to the form and effect of said policy of insurance, and although loss and damage on occasion of said fire has been sustained to a large amount, to wit, the amount aforesaid, and although notice and proof of said loss and damage was given and made to said defendant more than sixty days prior to the commencement of this suit, yet the said defendant has not paid the said sum of money so by it insured as aforesaid, or repaid or reimbursed the said loss sustained by the said fire as aforesaid, although often requested so to do, or any part thereof, but the sum so insured as aforesaid, and the said loss and every part thereof still remains wholly in arrear and unpaid, contrary to the form and effect of the said policy of insurance so by the said defendant in that behalf made as aforesaid, to the damage of said plaintiffs, as administrators as aforesaid, of five thousand dollars, and therefore said plaintiffs bring suit, &c.

KING & SCOTT, *Pl'ff's Att'ys.*

47 *Copy of instrument sued on.*

No. 394. $5,800.

ÆTNA INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-four and 96-100 dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, to insure H. K. White, esq., of Clifton, Ills., against loss or damage by fire, to the amount of fifty-eight hundred dollars for the term of four months, as follows: Fifteen hundred dollars on hay baled and loose, contained in his frame barn ; fifteen hundred dollars on timothy hay contained in two stacks, $7 50 on each stack, twenty-eight hundred dollars on prarie hay contained in 14 stacks, $2 00 each stack. The above property is situated in the village of Clifton, Iroquois county, Illinois.

$6,000 add. ins. on hay in stacks in Home Ins. Co., N. York.
$5,800, 4 m'ths, at 5-10 of $2\frac{1}{4}$ is 64 96.

48 And the said company do hereby promise and agree to make good unto the said assured, his executors, administrators and assigns all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the 1st day of November, one thousand eight hundred and sixty-four, (at 12 o'clock at noon,) unto the first day of March, one thousand eight hundred and sixty-five, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions annexed to this policy; provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And provided further, that in case the as-

49 sured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect, and if the said assured or his assigns shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this company and have the same endorsed on this instrument or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said

50 property. And it is agreed and declared to be the true intent

and meaning of the parties hereto, that in case the above-mentioned White shall at any time after the making and during the continuance of this insurance be appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra hazardous, or included in the memorandum of special rates, in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles, goods or merchandise in the condtiions aforesaid, denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease and be of no force or effect. And it is moreover declared that this insurance is not intended to apply to or cover any "books of accounts, written
51 securities, deeds or other evidences of title to lands, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for. This policy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Company at Kankakee, Ills.

"In witness whereof the Ætna Insurance Co. have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

"THOS. K. BRACE, JR., *Secretary.*
"E. G. RIPLEY, *President.*

"Countersigned at Kankakee, this 1st day of November, A. D. 1864.
"DALE & DURHAM, *Agents.*"

[50-ct. revenue stamp.]

Attached to said policy is a receipt, of which the following is a copy:

No. 239.—*Renewal.*

ÆTNA INSURANCE CO. OF HARTFORD, CT.,
Kankakee Agency, March 1st. 1865.

52 Not valid unless signed by the duly authorized agent at Kankakee, Ills.

Received of H. K. White, of Clifton, thirty-eight 86-100 dollars premium on fifty-eight hundred dolls., insured to self by policy No. 394, which is hereby continued in force for two months, to wit, from the 1st day of M'ch, 1865, until the first day of May, 1865, at noon.

THOS. K. BRACE, JR., *Secretary.*
E. G. RIPLEY, *President.*

Amount insured $5,800.

DALE & DURHAM,
Agents, Branch Office, 171 *Vine st., Cincinnati, O.*

[25-ct rev. stamp.]

On the back of said policy are eighteen conditions of insurance referred to in the body of the foregoing policy, a copy of which said conditions are contained and given in the first count of the declaration filed in this cause, on pages seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two; and to which reference is made; said conditions are numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

Endorsed: Filed May 7, 1866. Wm. H. Bradley, cl'k.

53 And on this day, to wit, the eighth day of May, in the adjourned May term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause, is the following entry, to wit:

Record entry.

CHARLES O. HOWE *et al.*, &c., *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.

On motion of the defendant, by J. A. Sleeper, esq., its attorney, the time is extended ten days in which to plead herein.

And on this day, to wit, the fifteenth day of May, A. D. 1866, came the said defendant, by Joseph A. Sleeper, its attorney, and filed in the said clerk's office its plea and notice in the said entitled cause, which said plea and notice is in the words and figures following, to wit:

Circuit Court U. S.

Plea and notice.

ÆTNA INSURANCE COMPANY *ads.* CHARLES O. HOWE AND HENRY SANDERSON, administrators of the estate of Henry K. White, deceased.

54 And the said defendant, by Joseph A. Sleeper, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not undertake or promise in manner and form as the said plaintiffs have above thereof declared against it, and of this the said defendant puts itself upon the country, and the said plaintiffs do the like, &c.

J. A. SLEEPER, *Def'ts Att'y.*

To the above-named plaintiffs:

Please to take notice that the said defendant will prove on the trial of the above-entitled action, under the general issue above pleaded, and will insist upon, as a bar to the said action of the said plaintiffs, that the said Henry K. White, at the time he obtained

from the said defendant the said policies of insurance, was a member of a firm or co-partnership, composed of Barton Rexford, Charles F. Loomis and Philip Wadsworth, and doing business under the name of H. K. White & Co., and as such co-partner was a joint owner of the said property in the said policies of insurance mentioned with the said Barton Rexford, Charles F. Loomis and
55 Philip Wadsworth, the same then and there being the property of said firm or co-partnership, and not the sole property of him, the said Henry K. White, the interest of the said White in the said co-partnership property being one-third, subject to the payment of all the debts of the said co-partnership; that the said Henry K. White when he applied to the said defendant for insurance upon said property, represented the same to the said defendant as his own individual property, and withheld from the said defendant the fact that he was only an owner of an undivided one-third part thereof, and that it was the property of the said firm or co-partnership.

That at the [the] time when the said Henry K. White made the said application for a renewal or continuance of the said policies of insurance, as in the said declaration stated, to wit, on the first day of March, 1865, the said White was, and continued to be a member of the said firm or co-partnership and the said property in the said declaration mentioned, and upon which the said insurance was continued, as in the said declaration alleged, was, and continued
56 to be the property of the said copartnership, and not the property of the said Henry K. White, and at the time of loss by fire, as in the said declaration mentioned, was so the property of the said firm, but that the said Henry K. White when he made the said applications, and when the said renewal receipts were given, and the said policies renewed or continued, as in the said declaration alleged, did not disclose such fact, but represented himself as the owner of the said property in his own right, and that the said property was his sole and individual property, and withheld from the said defendant the knowledge of the fact that he was not sole owner thereof, or that said property was in fact the property of the said firm or co-partnership, and that the said defendant did write, sign, and deliver the said policies of insurance, and renew and continue the same, as in the said declaration alleged, under the belief that the said Henry K. White was the owner of all of said property, and had an insurable interest therein to the full value thereof, and that no other person or persons were owners thereof, or had any in-
57 terest or title therein or thereto.

Yours, &c.,

J. A. SLEEPER, *Def'ts Att'y.*

Endorsed: Filed May 15, 1866. Wm. H. Bradley, cl'k.

And on this day, to wit, the seventh day of February, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause, is the following entry, to wit:

Record entry.

CHARLES O. HOWE & HENRY SANDERSON, as administrators of all and singular the goods and chattels, rights and credits, which were of Henry K. White, deceased, *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined by agreement they waive the intervention of a jury, and for trial put themselves upon the court, and the court, after hearing the
58 evidence, the hour of adjournment having arrived, the argument of counsel are postponed until to-morrow morning.

And on this day, to wit, the eighth day of February, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause, is the following entry, to wit:

Record entry.

CHARLES O. HOWE & HENRY SANDERSON, as administrators of all and singular the goods and chattels, rights and credits which were of Henry K. White, deceased, *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.

Now come again the parties by their attorneys, and after hearing the arguments of counsel, the court not being sufficiently advised in the premises, takes time to consider.

And on this day, to wit, the first day of March, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of
59 the proceedings thereof in the said entitled cause, is the following entry, to wit:

Record entry.

CHARLES O. HOWE & HENRY SANDERSON, as administrators of all and singular the goods and chattels, rights and credits, which were of Henry K. White, deceased, *vs.* ÆTNA INSURANCE COMPANY. } Assumpsit.

The court having considered, and being now sufficiently advised upon the matters heretofore submitted herein, find the issue for the

plaintiffs, and assess their damages to the sum of two thousand seven hundred and sixty-seven dollars.

It is thereupon considered and adjudged by the court that the said plaintiffs do have and recover of the said defendant the said sum of two thousand seven hundred and sixty-seven dollars, their damages so as aforesaid assessed, together with their costs and charges by them about their suit in this behalf expended, amounting to
60 the sum of one hundred and seven dollars and eighty-five cents, and that they have execution therefor.

61 On the hearing of said cause the following exceptions were taken and were allowed by the court, and are in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois.

Bill of exceptions.

CHARLES O. HOWE & HENRY SANDERSON, adm'rs of Henry K. White, deceased,
vs.
ÆTNA INSURANCE COMPANY.

UNITED STATES OF AMERICA, *Northern District of Illinois ss:*

Be it remembered that at a term of this court begun and held at the United States court-room, in the city of Chicago, on the third Monday of December, one thousand eight hundred and sixty-six, and on the seventh day of February, one thousand eight hundred and sixty-seven, as yet of said December term, came the parties
62 aforesaid by their attorneys aforesaid into the said court, and by common understanding between the parties it was agreed that the surviving partners of the firm of H. K. White & W. Wright appear in the case by counsel, and thereupon the said parties by their attorneys waived a jury in the said cause, and submitted the issues herein to the said court for trial; and thereupon the counsel for the plaintiffs, to maintain the said issues, on their behalf offered in evidence a policy of insurance, the body of which, with the conditions of insurance annexed, is in the words and figures following, that is to say:

No. 394. $5,800.

ÆTNA INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-four and 96-100 dollars to them paid by the assured, hereinafter named, the receipt whereof is hereby acknowledged, do insure H. K. White, esq., of Clifton, Ills., against loss or damage by fire to the amount of fifty-eight hundred dollars, for the term of four months, as follows:

Fifteen hundred hundred dollars on hay, baled and loose, contained in his frame barn.

Fifteen hundred dollars on timothy hay, contained in two stacks, $750 on each stack.

Twenty-eight hundred dollars on prairie hay, contained in 14 stacks, $200 each stack.

The above property is situated in the village of Clifton, Iroquois county, Illinois.

63 $6,000 add ins. on hay in stacks in Home Ins. Co., New York, $5,800, 4 months, at 5–10 per cent. of $2\frac{1}{4}$ is $64 96-100.

And the said company do hereby promise and agree to make good unto the said assured, his executors, administrators and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property, as above specified, from the first day of November, one thousand eight hundred [hundred] and sixty-four, (at 12 o'clock at noon,) unto the first day of March, one thousand eight hundred and sixty-five, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof, made by the assured, in conformity to the conditions annexed to this policy. Provided always, and it is hereby declared, that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this policy, then this insurance

64 shall be void and of no effect, and if the said assured or his assigns shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect.

And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above-mentioned White shall at any time after the making, and during the continuance of this insurance, be appropriated, applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra hazardous, or included in the memorandum of special rates in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles,

65 goods or merchandise in the conditions aforesaid denominated hazardous, extra hazardous, or included in the memorandum of special rates, unless herein otherwise specially provided

for or hereafter agreed by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease and be of no force or effect. And it is moreover declared, that this insurance is not intended to apply to or cover any books of accounts, written securities, deeds or other evidences of title to lands, nor to bonds, bill, notes or other evidences of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for. This policy shall not be valid until countersigned by the duly authorized agent of said Ætna Insurance Company at Kankakee, Ills.

In witness whereof the Ætna Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Hartford and State of Connecticut.

E. G. RIPLEY,
President.
THOS. K. BRACE, JR.,
Secretary.

66 Countersigned at Kankakee, this first day of November, A. D. 1864.

DALE & DURHAM, *Agents.*

Conditions of insurance referred to in the body of the foregoing policy.

1. Goods not hazardous are such as are usually kept in dry-goods stores, including coffee, flour, household furniture and linen, indigo, rice, spices, sugars, teas and other articles not combustible.

2. The following trades and occupations, goods, wares and merchandise, are denominated hazardous, viz: alcohol, basket sellers, brush maker's stock, cabinet furniture, china, earthen or glass ware, or plate glass in boxes, crates or casks; copperplate printers, cotton in bales, hat furnishers, (without use of fire except for heating their irons,) hardware and cutlery, jeweler's stock, liquor in glass, unpacked; looking-glasses, in boxes; manilla grass, in bales; paints, ground in oil; paper hangings, porter houses, potash, pocket-book maker's stock, printers of newspapers; rags in packages, sail makers,
67 ship-chandlers, spirituous liquors, cigar makers, stationer's stock, snuff makers, threshed grain, tin or sheet iron workers, victualling houses, watchmakers' stock and tools, wine in glass in packages, window or plate glass in packages.

3. The following trades and occupations, goods, wares and merchandise are denominated extra hazardous, viz: Basket makers, straw bleachers, booksellers' stocks, blacksmiths, boat builders, brass foundries, china, earthen or glass ware or looking-glasses unpacked, confectioners' stock, cotton unpacked, coopers, coppersmiths, druggists and apothecaries; fur dressers, flax in bales, fringe makers; gun makers or smiths, grate makers; hay pressed in bundles, hemp

in bales; ink makers, lamp manufacturers, lamp sellers' stock, lithographers; milliners' stock, morrocco manufacurers, optical and mathematical instrument makers; painters' stock, perfumers' stock, phosphorus, pictures and prints, printers of books and jobbing, plate or plated ware manufactories, pocket-book makers, plumbers and pewterers, saltpetre, silversmiths, stables, (private,) spirits of turpentine, stove manufactories, tobacco manufactories, toy-keepers' stock, type or stereotype manufactories, varnish, window and plate glass unpacked.

MEM.—Bakers, bark mills, blind makers, breweries, bookbinders, blacksmiths, boat builders, cabinet makers, carpenters, joiners, chair or coach makers, workshops, chemists, cotton mills, dyers
68 forges, fences, frame makers, furriers, fulling mills, grist mills, hat manufactories, houses, building or repairing, ink or ivory black or lampblack manufacturers, livery stables, lumber or mahogany yards, malt houses, metal and other mills of all kinds, musical instrument makers, oil makers, pump and block makers' shops, paper mills, rope makers, saw mills, shipbuilders' stock in the yard, ships, or other vessels in port, or their cargoes, or when building or repairing, steam engines or boats, tanneries, tallow melters and chandlers, timber yards, woolen mills, and generally all manufacturing establishments, and all trades requiring the use of fire, heat or steam power, not before enumerated, will be insured at special rates of premium.

☞ The following are not to be insured at any rate of premium, viz: Brimstone works, distilleries, flax mills, gunpowder, oil boiling houses, oakum factories, panoramas or other scenic paintings, patent leather manufactories, sash and blind factories, snuff mills, steam planing mills, tar-boiling houses, theatres, turpentine manufactories, varnish makers, steam saw mills, sugar refineries and India-rubber factories.

4. Applications for insurance must specify the construction and materials of the building to be insured, or containing the
69 property to be insured; by whom occupied; whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; whether any manufactory is carried on within or about it; and, in case of goods and merchandise, whether or not they are of the description denominated hazardous, extra hazardous, or included in the memorandum of special rates; and a false description by the assured of a building or of its contents, or the omission to make known any fact material to the risk, or in a valued policy, an over valuation shall render absolutely void a policy issued upon such description or valuation. But the office will be responsible for the accuracy of surveys and valuations made by its agents. If, after insurance is effected, either by the original policy or the renewal thereof, the risk be increased by any means within the control of the assured, or if such buildings or premises shall be, with the assent of the assured, occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void

and of no effect. If during this insurance any subsequent insurance should be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Ætna Insurance Company, amount to an over insurance, or the risk
70 be increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise; or if for any other cause the company shall so elect, it shall be optional with the company to cancel this policy after notice given to the assured, or his representative, of their intention to do so; in which case the company will refund the premium for the unexpired time.

5. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premiums.

6. Goods held in trust, or on commission, are to be insured as such, otherwise the policy will not cover such property; and in case of loss the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein. Goods on storage must be separately and specifically insured. If the interest or property insured be leasehold, or that of mortgage, or any other interest not absolute, such must be made known to this company, and expressed in the policy.

7. Policies of insurance subscribed by this company shall not be assignable without the consent of the company, expressed by endorsement m de thereon. In case of assignment without such
71 consent, whether of the whole policy or of any interest in it, the liability of the company, in virtue of such policy, shall thenceforth cease. And in case of any transfer or change of title in the property insured by this company, or of any undivided interest therein, such insurance shall be void and cease.

8. This company will not be liable for damage to property by lightning, aside from fire; nor for damage occasioned by the explosion of a steam boiler, nor for damage by fire resulting from such explosion; nor explosions caused by gunpowder, gas, or other explosive substances; nor for damage occasioned by the use of campheur spirit-gas or burning fluid, unless otherwise expressly provided. The keeping of gunpowder for sale or on storage, upon or in the premises insured, without written permission in the policy, shall render it void.

9. Jewels, watches, plate, medals, musical instruments, paintings, statuary, sculptures, and curiosities are not deemed to be included in any insurance unless an inventory thereof accompany the application for insurance, or is inserted in the policy.

10. In case of fire, or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use all possible diligence in saving and preserving the property. And
72 if they shall fail so to do, this company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect. And it is also mutually understood that there can be no abandonment to the insurers of the subject insured.

11. All persons insured by this company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the company

or its agents; and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands, and verified by their oath or affirmation; they shall also declare on oath whether any and what other insurance has been made on the same property; what was the whole value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured, or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such buildings; and when and how the fire originated, so far as they know or believe, and procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers) that he is acquainted with the character and circumstances of the person or persons insured, and has made
73 diligent enquiry into the facts set forth in their statement, and knows, or verily believes that he, she or they, really and by misfortune, and without fraud or evil practice, hath or have sustained by such fire, loss and damage to the amount therein mentioned; and also, if required, shall produce their books of account and other proper vouchers; and shall also, if required, submit to an examination under oath by the agent or attorney of the company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proofs, declarations, and certificates are produced, and examination if required, the loss shall not be deemed payable.

Also, if there appear any fraud or false swearing, the insured shall forfeit all claim under this policy. Damage to buildings not totally destroyed shall be appraised by disinterested men, mutually agreed upon by the assured and the office or its agents; and where merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles
74 according to their kind, and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination, and appraisal of said damage on each article, by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant, one-half of the appraisers' fees to be paid by the insurers; a copy of the written portion of the policy to be given in the affidavit of the claimant in all cases. Also, copy of all other policies insuring the same property, and sharing payment of the same loss with this company.

A claim for loss or damage on a policy assigned where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured, in conformity with the conditions of this policy, in like manner as if no assignment had been made; otherwise this policy shall be void and of no force or validity whatever, and all

liability on the part of this company shall cease. Reinsurance for any other insurance company to be on the basis of joint liability with said company, and in no event will this company be liable for a sum greater than such portion as the sum hereby reinsured bears
75 to the whole sum insured on the property by the company reinsured; and in case of loss this company to pay their pro rata proportion at the same time, manner and form as the company reinsured. Plans and specifications of buildings, machinery and fixtures damaged or destroyed, must be furnished free of expense when requested. When an inventory of merchandise or other property, sound or damaged, is to be taken in adjusting a claim for loss or damage, this company shall have notice, and the appointment of one or more assistants to complete such listing of property, when required by its agent.

12. Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved, and in case differences shall arise touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties. In case of any loss on or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do within thirty days after the preliminary proofs shall have been re-
76 ceived at the office of the company.

13. Insurance once made may be continued for such further term as may be agreed on, the premium thereon being paid, and a renewal receipt being given for the same, and it shall be considered as continued under the original representation in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make when the risk has been changed either within itself or by the surrounding or adjacent buildings.

14. When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the assured.

15. Where property insured by this company is damaged by removal from a building, in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

16. The company will not be answerable for any loss arising from the use of fires in building unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or devi-
77 ation from the laws or regulations of police, made to prevent accidents from fires, in places where laws and regulations on this subject exist.

17. It is furthermore hereby expressly provided, that no suit or

action against said company for the recovery of any claim upon, under or by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur. And in case any such suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

18. In case this insurance shall be on property situated over
78 one mile from the city, town or village in which the agency is located where this policy is filled and countersigned, it is to be a condition of the insurance in the event of any loss covered by this policy, one-fourth of such loss is to be borne by the assured, and three-fourths by this company, (not exceeding the sum insured,) nor in the event of additional insurance by other companies, on property so situated, any greater proportion of said loss than may be necessary to make good said three-fourths proportion of the loss sustained, except in the case of buildings damaged or partially destroyed, which have been surveyed and values approved by a duly authorized agent or surveyor of this company.

The said counsel for the plaintiff also read in evidence a certificate of the renewal of said policy, made by the said defendant to the said H. K. White, in his lifetime, which was in the words and figures following, that is to say :

Renewal, No. 239.

ÆTNA INSURANCE CO. OF HARTFORD, CT.,
Kankee Agency, March 1, 1865.

Not valid unless signed by the duly authorized agent at Kankakee, Ills.

Received of H. K. White, of Clifton, thirty-eight 86-100 dollars premium on fifty-eight hundred doll's, insured to self by policy No. 394, which is hereby continued in force for two months, to wit, from the 1st day of March, 1865, until the first day of May, 1865, at noon.

E. G. RIPLEY, *President.*
THO'S K. BRACE, JR., *Secretary.*

Amount insured, $5,800.

DALE & DURHAM, *Agents.*

[Rev. stamp, 25 cts.]

79 There was also read in evidence an agreement in the words and figures following, offered by the counsel representing the firm of H. K. White & Co:

CLIFTON, IROQUOIS CO., ILLINOIS,
Sept. 10th, A. D. 1863.

The undersigned have this day entered into a co-partnership for the purchasing of hay, pressing and delivering of the same to market. By the terms of this agreement, H. R. White, of Clifton, Iroquois county, is to give his attention to the purchasing of said hay, and preparing the same for market. Said C. F. Loomis & Company, of Chicago, Cook county, are to furnish all the money required for the purchase of said hay, and for the construction of a suitable barn in which to press the hay. Said B. N. Rexford, of Blue Island, county of Cook, is to furnish a power hay fork and two hay presses; for the use of one of said presses, the company are to allow the said Rexford twenty-five (25) dollars; said presses and hay forks to belong to the said Rexford at the close of said co-partnership; and the said White has the privilege of purchasing said barn of the said Loomis & Company upon paying the said Loomis & Company the cost of said barn; said White is to procure all the rope and material for baling and loading said hay, and to be allowed for the same out of the proceeds of said hay; also to be allowed for all the expenses of labor for handling, pressing and loading said hay, and for insuring the same. And
80 it is agreed that the said White shall refund to said Loomis & Co. all moneys advanced by them for the purchase of hay, as soon as there is money sufficient in said White's hands, arising from the sale of hay, and it is agreed that the said White shall refund to the said Loomis & Company the money as soon as received, after reserving enough to pay what expenses may have occurred, and for the purchase of any hay that may be procured; and it is further agreed that the said White shall pay to the said Rexford, on or before January first, next, three hundred dollars, which amount is to be deducted from said Rexford's share in the profits in said co-partnership; and at the close of said co-partnership, the profits, after deducting all expenses as above stated, are to be divided equally between the said three parties, the said White agreeing to account strictly for all moneys received by him as the proceeds of said hay.

In witness whereof we have hereto set our hands and seals the day and year first above written.

[SEAL.] H. R. WHITE.
[SEAL.] B. N. REXFORD.
[SEAL.] C. F. LOOMIS & CO.

Witness: J. W. WEBB.

[5-ct. stamp.]

Appended to the foregoing contract was the following, which was also read in evidence by the counsel for the surviving partners:

The above contract it is hereby agreed upon by us shall remain in full force for the prosecution of the same business, and in the same manner, for and during the ensuing year; the name and style
81 of the firm to be called H. R. White, & Co.; profits to be divided and expenses paid as provided in contract; as witness our hands and seals this 29th day of August, A. D. 1864.

[SEAL.] H. R. WHITE.
[SEAL.] B. N. REXFORD.
[SEAL.] C. F. LOOMIS & CO.

Witness: F. B. ELLSWORTH.

[5-ct. stamp.]

The counsel for the said plaintiffs offered and read in evidence the preliminary proofs of loss made by the plaintiffs as administrators of the estate of Henry K. White, deceased, which were delivered to the defendants in September, 1865, which were in the words and figures following, that is to say:

To the Ætna Insurance Company of Hartford, in the State of Conneticut:

The following is proof of the loss of Henry R. White, late of Clifton, in the county of Iroquois, and State of Illinois, sustained by him by the destruction by fire of property covered by policy No. 394, issued to said White by the Ætna Insurance Company of Hartford, in the State of Conneticut, which said policy was renewed by certificate No. 239, &c.

STATE OF ILLINOIS, *Iroquois County, ss:*

Charles O. Howe and Henry Sanderson, being duly sworn,
82 say, that they are the administrators of the estate of Henry R. White, late of Clifton, in the county of Iroquois and State of Illinois, deceased. That the Ætna Insurance Company, of Hartford, in the State of Connecticut, through its agency at Kankakee, in the State of Illinois, did issue its policy of insurance No. 394, bearing date on the first day of November, A. D. 1864, to the said Henry K. White, said policy of insurance terminating on the first day of March, A. D. 1865, at noon of that day, and which said policy of insurance was renewed by certificate No. 239, issued to said White by said insurance company, bearing date March first, A. D. 1865, from the said first day of March, 1865, until the first day of May, A. D. 1865, at noon, the written portion of said policy of Insurance, with its immediate context, is as follows, to wit:

By this policy of insurance the Ætna Insurance Company, in consideration of sixty-four and 96-100 dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowl-

edged, do insure H. K. White, esq., of Clifton, Ills., against loss or damage by fire to the amount of fifty-eight hundred dollars for the term of four months, as follows:

Fifteen hundred dollars on hay, baled and loose, contained in his frame barn.

Fifteen hundred dollars on timothy hay, contained in two stacks, $750 on each stack.

Twenty-eight hundred dollars on prairie hay, contained in 14 stacks, $200 each stack.

83 The above property is situated in the village of Clifton, Iroquois county, Illinois.

$600 add. ins. on hay in stacks in Home Ins. Co., N. York.

$5,800, 4 months, at 5-10 of $2\frac{1}{4}$ is 64.96.

That, as these affiants are informed and believe to be true, a fire occurred on the third day of April, A. D. 1865, by which the property insured as aforesaid, was injured or destroyed, so far as these affiants have been able to ascertain the same, to the amount and of the value of five thousand two hundred and sixty-eight 46-100 dollars, as follows, to wit.

698 196-1,000 tons prairie hay, in 13 stacks, at $4 75 per ton	$3,316 42
99 204-1,000 tons timothy hay, in 2 stacks, at $10 per ton	992 04
6 tons baled timothy hay, at $15 per ton	90 00
80 tons " prairie " in barn, at $9 per ton	720 00
15 " loose timothy " " $10	150 00
	$5,268 46

And that, as these affiants are informed and believe to be true, the actual cash value of the property so insured and injured or destroyed as aforesaid, immediately preceding the time of the said fire, amounted to the said sum of five thousand two hundred and sixty-eight 46-100 dollars.

That the interest of the said White in the said property insured, and injured or destroyed by fire as aforesaid, as these affiants are informed and believe to be true, was the sum of five thousand two hundred and twenty-two and 92-100 dollars, and that, as

84 these affiants are informed and believe to be true, the said White lost by said fire property insured as aforesaid of the actual cash value of five thousand two hundred and twenty-two and 92-100 dollars.

That, as these affiants are informed and believe to be true, the building containing a portion of the property insured as aforesaid was occupied by H. R. White & Co., and was used for storing and pressing hay by them and for no other purpose.

That these affiants are ignorant of the origin of the said fire; they have heard that it might have and probably did originate from sparks from locomotives standing or passing on the Illinois Central railroad.

That said Henry R. White departed this life, at Clifton aforesaid, on the ninth day of April, A. D. 1865, and these affiants were appointed by the County Court of said Iroquois county administrators of the estate of said White, and having been duly qualified are acting such administrators.

That the said fire did not, as they verily believe, originate by any act or design or procurement of said White, or in consequence of any fraud or evil practice of said White, and that nothing has been done by said White or with his privity or consent, as these affiants verily believe, to violate the conditions of said policy or render the same void, and certainly none has been by these affiants.

That there was an insurance on a portion of the property
85 above mentioned and described by policy No. 105, issued to said White by the Home Insurance Company of the city of New York, bearing date August 18th, 1864, and terminating August 18th, 1865.

The written portion of said last-mentioned policy of insurance, with its immediate context, is as follows, to wit:

"By this policy of insurance the Home Insurance Company, in consideration of seventy-eight dollars, to them paid by the insured, hereinafter named, the receipt whereof is hereby acknowledged, do insure Henry Kirk White, esq., of Clifton, against loss or damage by fire to the amount of seventy-eight hundred dollars for the period of one year, as follows: six hundred dollars on his frame barn, twelve hundred dollars on his hay presses contained therein, and six thousand dollars on his hay, contained in stacks, adjacent thereto, all situated in the village of Clifton, Iroquois county, Illinois. Above $6,000 on hay covers as follows, on sixteen stacks, being $375 on each stack.

"Additional ins. on same $4,800, being $2,800 on 14 stacks prairie hay, $200 each, $1,500 on 2 stacks timothy hay, $750 each."

These affiants further say, that, as they are informed, and believe it to be true, the said 698 196-1,000 tons of hay of the value of $3,316 42, and the said 99 204-1,000 tons of hay of the value of $992 04, was also covered by the said policy, No 105, issued by the said Home Insurance Company as aforesaid.

86 And these affiants, as administrators of the estate of Henry K. White, deceased, claim four thousand five hundred and fifty two 04-100 dollars, being $2,600 on the said 13 stacks of hay, $200 each stack, $992 04-100 on the said two stacks; $90 on the said six tons bailed timothy hay; $720 on the said 80 tons hay in barn; and $150 on the said 15 tons loose timothy hay.

CHAS. O HOWE.
HENRY SANDERSON.

Subscribed and sworn to before me this twenty-second day of September, 1865.

SILAS EARLE, *J. P.*

[5-ct. stamp.]

STATE OF ILLINOIS, *Iroquois County, ss*:

I, Silas Earle, a justice of the peace, residing in Clifton, most contiguous to the property hereinbefore described, hereby certify that I am not concerned in the loss or claim above set forth, either as creditor or otherwise, or related to the insured or sufferers; that I have examined the circumstances attending the fire or damaged as alleged, and that I am well acquainted with the character and circumstances of the insured, and do verily believe that he has by misfortune, and without fraud or evil practice, sustained by the said described fire loss and damage on the property insured to the
87 amount of four thousand five hundred fifty-two 14-100 dollars, the sum stated in the foregoing affidavit of loss.

In testimony whereof I have hereunto set my hand and official seal this 22nd day of Sept., A. D. 1865.

[SEAL.] SILAS EARLE, *J. P.*

[5-ct. stamp.]

The counsel for the said plaintiffs then read in evidence letters of administration granted to them by the County Court of Iroquois county, Illinois, appointing them administrators of the goods, chattels and credit of said Henry K. White, and also proved that said White died intestate, in said Iroquois county, on the ninth day of April, A. D. 1865.

The said parties then admitted as evidence in the case that a fire occurred on the third day of April, A. D. 1865, by which there was burned and totally destroyed hay covered by said policy and certificate of renewal to the value of five thousand two hundred and fifty-seven dollars; that if the said White was entitled to be paid the whole of the loss then the proportions for the two companies, that is to say, the Home Insurance Company and the Ætna Insurance Company to pay was as follows:

The Ætna Insurance Company	$2,767 00
" Home Insurance Company	2,490 00

But the defendant at the same time accompanied such admission with a denial that said White or the plaintiff were entitled to
88 be paid any of said loss, or if entitled to be paid anything not more than said White's interest in the said property as between him and his co-partners, and in no event more than one-third of the said loss.

And thereupon the counsel for the plaintiff called and had sworn as a witness Charles O. Howe who testified in substance that he was one of the plaintiffs and one of the administrators of Henry K. White, deceased, and that the administrators had settled the hay account with Rexford & Loomis & Co., surviving partners of White, from the books of Henry K. White, which were then and there shown him. He proved the death of White on the 9th of April, the issuing of letters of administration to the plaintiffs and the burning of the hay on the 3d of Ap'l, 1865.

The plaintiffs offered to prove by the books of White that his in-

terest in the hay exceeded the sum of five thousand doll's, to which the defendant objected, and the court sustained the objection, and the plaintiff then and there excepted.

Barton N. Rexford was then called as a witness by the plaintiff's counsel and duly sworn and testified in substance as follows:

I am one of the surviving partners of H. K. White & Co. Knew the hay burned; it belonged to the firm of H. K. White & Co.

Question. Did Mr. White advance any more money than
89 the other partners for the hay that was burned?

To which question the counsel for the defendant objected. The court overruled the objection and defendants excepted in due form of law, and the witness answered:

The hay that was burned, Loomis & Co. was to furnish all the money to purchase it. I had a settlement with the administrators. I did not keep the books; Mr. White kept them, and I only knew how much he paid from what the books show. Book shown; he says it is the book settled by.

(The counsel for the plaintiffs then offered the book in evidence, and read from it to the court, subject to objection by defendant's counsel, two items charged to H. R. White & Co. of the amounts paid for premium on the original policy, made long after the date of the policy, and also the premium on the renewal of the policy.)

Question. State whether or not Mr. White was directed to get the hay insured for the company, and what, if anything, he said about having insured.

To which question the counsel for the defendant objected; and the evidence was admitted, subject to the objection, and the witness answered:

That White was directed to get the hay and the presses insured for the firm, and he afterwards told him, the witness, that they were insured, all in apple-pie order. I settled once with White, the latter
90 part of August, 1864. Settled the hay account which I had advanced, and there were some charges against me; found his books correct. I did not settle with White from this book, but from another. I settled with the administrators the hay account from this book, and so far as I know the account was correct.

R. L. Mitchell was then called by the plaintiffs and sworn, and testified, in substance, that he was present at the fire; had been at work for White two or three months putting up hay. There were fifteen or sixteen stacks of hay, about fifty tons to a stack, worth from four to six dollars a ton. There were two stacks of timothy hay, about fifty tons in a stack, worth twelve dollars per ton. There were five or six tons of baled timothy hay in the barn, worth sixteen dollars per ton; seventy or eighty tons of prairie hay in the barn, baled, worth ten dollars per ton, and about twelve or fifteen tons of loose hay in the barn, worth about thirteen dollars per ton. The hay was stacked by H. K. White, and put in the barn by him. He had the whole

management and control of it, and paid me; and that was the hay that was burned. I settled with White by his books. I found his account correct. White had six men helping put up the hay. Hay was purchased from people around Clifton.

On his cross examination he further testified that some hay was sold and shipped during the time he worked there; a good
91 many car loads went off on the railroad; could not tell whether more or less than fifty. I began to work in November, about the middle. Most of the hay in stacks was on hand when I began to work. The small sized stacks were not burned; there were some thirty to thirty-five tons saved—part prairie hay and part timothy. Part of one stack outside the fence was burned. I think there were some three stacks not burned; contained in all thirty to thirty-five tons. About one-fourth of the hay saved was timothy. White paid me about one hundred and fifty dollars. I did not know whether the hay belonged to White or whether it belonged to the company. I heard something said there about a company, but I did not know who the company were. White had the management and control of the whole matter.

Direct resumed.

The barn was occupied by White; was used by him for storing and pressing the hay. The barn was burned.

A. H. Adams, called as a witness, by plaintiffs, testified in substance as follows:

I live at Clifton; lived there in April, 1865. I saw the fire. I worked for White in pressing hay; worked some two months. There were fifteen or sixteen stacks of prairie hay; averaged forty-five or fifty tons each; worth five dollars per ton; three or four stacks of timothy; think there were three burned; two had fifty tons each, worth
92 twelve dollars per ton. There were some bales of timothy hay in the barn, four to six tons, worth sixteen dollars per ton. There were eighty or ninety tons of prairie hay, in bales, in the barn, worth ten dollars per ton; also some five tons loose hay in barn, worth thirteen dollars per ton—all burned. It was put in by Mr. White. I worked for him; he hired me; I settled by his books and found them correct.

On his cross-examination he testified: I commenced work first of January, 1865. The hay was all stacked when I came there; think there were four stocks of timothy hay burned; one small stack of timothy, about twelve tons, saved. Most of the prairie hay was stacked before the tenth of November. White paid me about one hundred and fifty dollars. Hay was shipped away after I went there; can't tell how much, say 20 or 30 car loads, about the first of January, shipped to Cairo; a little shipped for Chicago. There were eight or ten tons to the car load. The hay shipped was taken out of the barn, brought in from time to time, baled and shipped away. I did not know whether the hay belonged to White or to a company. I

heard something said about a company, but did not know who they were. White hired me and paid me, and had the whole management of the hay.

The plaintiffs here rested their cause. and the defendant
93 called and had sworn as a witness John Dale, who testified in substance as follows:

I reside in Kankakee; did reside there in November, 1864. I knew H. R. White. He resided at Clifton. I was one of the agents at Kankakee of the Ætna Insurance Company, who issued the policy read in evidence. I recollect Mr. White applying for the insurance. It was about the date of the policy. The application was made to me verbally. Mr. White said he wanted his hay insured. I took down a memorandum, and aftewards wrote it in the policy. Nothing was said by White about the ownership of the hay. I did not ask him any questions about it. All that was said was, that he wanted his or the hay insured—gave me the items, and I took a memorandum in writing, from which I wrote the policy. I was also agent for the Home Insurance Company, and issued the policy of that company. We had the previous year insured hay for White. the same as the present policy. I did not know that any one else had any interest in the hay till after the fire; and then I learned that it belonged to the firm of H. R. White & Co. I received first proofs of loss from the adminstrators and surviving partners jointly, and they were returned to me as not satisfactory.

I gave notice to the parties, and received no other but the ones from the administrator now shown me, being the same read in evi-
dence. They were left at our office in Kankakee, in Sep-
94 tember, 1865, during my absence. My partner, Mr. Burnham, laid them away in a pigeon hole, and I did not find them for some time after; when I found them, I forwarded them to Mr. Bennett, the general agent of the Ætna Insurance Co., at Cincinnati. The renewal certificate was issued by me at Mr. White's request made to me personally.

On his cross-examination he testified:

I can't tell whether I delivered the policies to Mr. White in person or not—probably sent them to him. The renewal receipt I am quite, positive I gave to him directly. I can't tell the time Mr. White paid the premium on the original policy. We were doing a banking business; he deposited with us, and probably gave us his check. I can't say whether he paid for his policy when he applied for it or not. He did not pay for the Home and this at the same time. I did not know that any one else was interested in the hay at the time, not until after the fire. It would have made no difference if I had known; it would have been all the same. I had nothing to do with adjusting this loss. It went down with Mr. Wyman, who was was an agent of the company after the loss, and looked it over. I had known Mr. White for several years.

Direct resumed.

The Home Insurance Company's policy was not issued at the same time as this policy in suit. It was issued long before. The premium was not paid on the Ætna's policy prior to its issue.

Clifton, where the hay was, is a station on the Illinois
95 Central railroad, some thirteen miles below Kankakee.

The foregoing is in substance all the evidence given in the case, and thereupon the action was submitted to the said court for decision, both on the question of law and effect.

And afterwards, to wit, on the first day of March, one thousand eight hundred and sixty-seven, as yet of said December term, come the said parties. by their attorneys aforesaid, and the said court being then and there sufficiently advised, did find the issues for the plaintiff, to which the defendant then and there excepted.

Exceptions allowed.

[SEAL.] THOMAS DRUMMOND.

Endorsed: Filed March 1st, 1867. Wm. H. Bradley, cl'k.

On this day, to wit, the 14th day of July, A. D. 1868, came said defendant, by its attorney, and filed its appeal bond in said entitled cause, which said bond is in the words and figures, following, to wit:

96 Supreme Court of the United States.

Appeal bond.

ÆTNA INSURANCE COMPANY, pl'ff in error,
vs.
CHARLES O. HOWE AND HENRY SANDERSON, administrators of all and singular the goods, chattels and credits which were of Henry K. White, deceased, defendants in error.

Know all men by these presents, that we, Joseph A. Sleeper and Henry K. Whiton, are held and firmly bound unto the above-named Charles O. Howe and Henry Sanderson, administrators of all and singular the goods, chattels and credits which were of Henry K. White, deceased, in the penal sum of five hundred dollars, good and lawful money of the United States, to be paid to the said Charles O. Howe and Henry Sanderson, administrators as aforesaid, their heirs, executors or administrators, to which payment well and truly to be made we bind ourselves, and our and each of our heirs, executors and administrators firmly by these presents.

97 Sealed with our seals, and dated this fourteenth day of July, one thousand eight hundred and sixty-eight.

Whereas the above-named Ætna Insurance Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered by the Circuit Court of the United

States for the eighth circuit and northern district of Illinois, in a certain cause lately depending therein, wherein the said Charles O. Howe and Henry Sanderson, administrators as aforesaid, were plaintiffs, and the said Ætna Insurance Company was defendant: Now therefore the condition of this obligation is such, that if the said Ætna Insurance Company shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] J. A. SLEEPER.
[SEAL.] HENRY K. WHISTON.

Sealed and delivered in presence of—

Approved:

THOMAS DRUMMOND.

Endorsed: Filed July 14th, 1868. Wm. H. Bradley, cl'k.

98 NORTHERN DISTRICT OF ILLINOIS, *sct*:

I, William H. Bradley, clerk of the Circuit Court of the United States for said district, do hereby certify that the above and foregoing pages, numbered from one to ninety-seven, consecutively, contain a full, true and complete transcript of the record of all the proceedings had in said court in the cause wherein said Charles O. Howe et al., administrators, &c., are plaintiffs, and the said Ætna Insurance Company is defendant, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in the district aforesaid, this fourteenth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5 cent int. rev. stamp.]

99 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you, between Charles O. Howe and Henry Sanderson, administrators of all and singular the goods, chattels, rights and credits which were of Henry K. White, deceased, plaintiffs, and Ætna Insurance Company, defendant, a manifest error hath happened to the great damage of the said Ætna Insurance Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the said

record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in said Supreme Court, to be then and
100 there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourteenth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL] WM. H. BRADLEY, *Clerk*.

Endorsed: Sup. Court U. S. Ætna Insurance Company, pl'ff in error, vs. Charles O. Howe and H. Sanderson, administrators, &c., de'f'ts in error. Writ of error. J. A. Sleeper, att'y, pl'ff in error.

101 UNITED STATES OF AMERICA.

Northern District of Illinois, ss:

The United States of America to Charles O. Howe and Henry Sanderson, administrators of all and singular the goods, chattels, rights and credits which were of Henry K. White, deceased:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit of the United States for the eighth circuit and northern district of Illinois, wherein the "Ætna Insurance Company is plaintiff in error, and the said Charles O. Howe and Henry Sanderson, administrators of all and singular the goods, chattels and credits which were of Henry K. White, deceased, are defendants in error, to show cause, if any you have, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of Circuit of the United States for the eighth circuit and northern district of Illinois, this fourteenth day of July, one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

THOMAS DRUMMOND.

Endorsed: Supreme Court U. S. Ætna Insurance Company, pl'ff in error, vs. Charles O. Howe and Henry Sanderson, adm'rs, de'f'ts in error. Citation. J. A. Sleeper, att'y for pl'ff in error. We admit due service of the within citation July 20, 1868. C. O. Howe, H. Sanderson. Service and milage $1 00.

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